

1 UNITED STATES DISTRICT COURT  
2 DISTRICT OF NEVADA  
3

4 DANE PATRIC GEE,

5 Plaintiff

6 v.

7 G. BRYAN, et. al.,

8 Defendants  
9

Case No. 2:17-cv-02148-JAD-VCF

**Order Dismissing Action  
and Closing Case**

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11 This is a *pro se* civil rights action under 42 U.S.C. § 1983 by a former state prisoner. On  
12 April 17, 2019, this Court issued an order denying the application to proceed *in forma pauperis*  
13 for prisoners as moot because plaintiff is no longer incarcerated.<sup>1</sup> The Court ordered him to file  
14 a complete application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of  
15 \$400 by May 17, 2019.<sup>2</sup> That deadline expired without plaintiff filing an application to proceed  
16 *in forma pauperis* for non-prisoners, paying the full filing fee, or otherwise responding to the  
17 order.

18 District courts have the inherent power to control their dockets and “[i]n the exercise of  
19 that power, they may impose sanctions including, where appropriate . . . dismissal” of a case.<sup>3</sup> A  
20 court may dismiss an action with prejudice based on a party’s failure to prosecute an action,  
21 failure to obey a court order, or failure to comply with local rules.<sup>4</sup> In determining whether to

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23 <sup>1</sup> ECF No. 22 at 2.

24 <sup>2</sup> *Id.*

25 <sup>3</sup> *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986).

26 <sup>4</sup> *See Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (dismissal for noncompliance with local  
27 rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir. 1992) (dismissal for failure to comply  
28 with an order requiring amendment of complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th  
Cir. 1988) (dismissal for failure to comply with local rule requiring pro se plaintiffs to keep court  
apprised of address); *Malone v. U.S. Postal Service*, 833 F.2d 128, 130 (9th Cir. 1987) (dismissal

1 dismiss an action for lack of prosecution, failure to obey a court order, or failure to comply with  
2 local rules, the court must consider several factors: (1) the public's interest in expeditious  
3 resolution of litigation; (2) the court's need to manage its docket; (3) the risk of prejudice to the  
4 defendants; (4) the public policy favoring disposition of cases on their merits; and (5) the  
5 availability of less drastic alternatives.<sup>5</sup>

6 I find that the first two factors—the public's interest in expeditiously resolving the  
7 litigation and the court's interest in managing the docket—weigh in favor of dismissing this case.  
8 The risk-of-prejudice factor also weighs in favor of dismissal because a presumption of injury  
9 arises from the occurrence of unreasonable delay in filing a pleading ordered by the court or  
10 prosecuting an action.<sup>6</sup> The fourth factor is greatly outweighed by the factors in favor of  
11 dismissal, and a court's warning to a party that his failure to obey the court's order will result in  
12 dismissal satisfies the consideration-of-alternatives requirement.<sup>7</sup> The Court's order requiring  
13 plaintiff to file an application to proceed *in forma pauperis* for non-prisoners or pay the full  
14 filing fee by May 17, 2019, expressly stated: "It is further ordered that, if Plaintiff fails to timely  
15 file an application to proceed *in forma pauperis* for non-prisoners or pay the full filing fee of  
16 \$400, the Court will dismiss this case with prejudice."<sup>8</sup> Thus, plaintiff had adequate warning  
17 that his failure to timely pay the fee or submit a completed application would result in this case's  
18 dismissal.

19 Accordingly, IT IS HEREBY ORDERED that **this action is DISMISSED** without  
20 prejudice based on plaintiff's failure to file an application to proceed *in forma pauperis* for non-  
21 prisoners or pay the full filing fee in compliance with this Court's order.

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23 for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421, 1424 (9th Cir. 1986)  
(dismissal for lack of prosecution and failure to comply with local rules).

24 <sup>5</sup> *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at 130; *Ferdik*,  
25 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

26 <sup>6</sup> See *Anderson v. Air West*, 542 F.2d 522, 524 (9th Cir. 1976).

27 <sup>7</sup> **Error! Main Document Only.** *Ferdik*, 963 F.2d at 1262; *Malone*, 833 F.2d at 132–33;  
28 *Henderson*, 779 F.2d at 1424.

<sup>8</sup> ECF No. 4 at 8.

1 The Clerk of Court is directed to ENTER JUDGMENT accordingly and CLOSE THIS  
2 CASE.

3 Dated: May 31, 2019

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7 Jennifer Dorsey, United States District Judge  
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